

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TERRY LOWMAN,

Plaintiff-Appellant,

v

FAMILY INDEPENDENCE AGENCY,

Defendant-Appellee.

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UNPUBLISHED

August 30, 2005

No. 253213

Livingston Circuit Court

LC No. 02-019506-NZ

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition to defendant and dismissing her claims under the Elliott-Larsen Civil Rights Act (“ELCRA”), MCL 37.2101 *et seq.* We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff became a youth specialist at a correctional facility in 1987. In 1997, plaintiff filed a sexual harassment complaint against one of her supervisors. The Family Independence Agency (“FIA”) investigated the allegations and found the claim unsubstantiated. Later, plaintiff was promoted and assigned to another facility, where she performed her duties satisfactorily but had certain issues relating to authority. Plaintiff informally complained about her treatment by a supervisor at the new facility. She claims that the supervisor’s supervisor told her that she complained too much and was disruptive because she challenged her supervisor in front of the residents and other staff members.

In 2001, an opportunity for promotion at the facility was announced. Plaintiff applied and participated in the selection process but was denied a promotion. Plaintiff sued the FIA alleging violations of ELCRA. Plaintiff claimed that she was sexually harassed and that she was denied the promotion in retaliation for her complaints about sexual harassment. The trial court granted defendant’s motion for summary disposition and dismissed plaintiff’s complaint because the alleged harassment occurred outside the statute of limitations and because plaintiff did not create a genuine issue of material fact that defendant’s agents retaliated against plaintiff because she complained of sexual harassment. On appeal, plaintiff only appeals the dismissal of her retaliation claim.

A *prima facie* case of unlawful retaliation under MCL 37.2701 consists of (1) engaging in a protected activity, (2) known by the defendant, (3) an adverse employment action, and (4) a

causal connection between the protected activity and the adverse employment action. *Garg v Macomb County Cmty Mental Health Servs*, 472 Mich 263, 272-273; 696 NW2d 646 (2005); *Pena v Ingham Co Rd Comm'n*, 255 Mich App 299, 311; 660 NW2d 351 (2003); *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). In order to show causation in a retaliatory discrimination case, "plaintiff must show something more than merely a coincidence in time between protected activity and adverse employment action." *West v General Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003). Further, causation requires that the protected activity was a "significant factor" in the adverse employment action. *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001).

If a plaintiff can state a prima facie case of discrimination or retaliation, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason to explain the adverse employment action. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 173; 579 NW2d 906 (1998). The plaintiff may then attempt to show that the proffered reason was a mere pretext, in that the reason is false, that the reason is not the actual reason for the action, or that the reason does not warrant the adverse employment action. *Id.* at 174.

Here, plaintiff did not create a genuine issue of material fact that defendant's agents denied her a promotion in retaliation for her claims of sexual harassment, which is protected conduct under ELCRA. Although plaintiff filed a complaint alleging sexual harassment in 1997, that conduct was too remote to support plaintiff's claim that defendant retaliated against her in 2001. Although plaintiff alleged that she informally complained about her more recent supervisors, the mere temporal proximity is not enough to show that those complaints were a significant cause in plaintiff not being promoted. Moreover, plaintiff did not show that defendant's proffered reason for denying her a promotion, i.e., low scores in the selection process, was pretextual. She did not show that she did not receive low scores, or that the low scores were not the reason for the denial, or that her low scores did not warrant promoting the other applicants who scored higher.

We find that the trial court did not err in granting defendant's motion for summary disposition and in dismissing plaintiff's claims.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens